

AO 133

(Rev. 8/06) Bill of Costs

## UNITED STATES DISTRICT COURT

WESTERN

District of

WISCONSIN

HYPERPHRASE TECHNOLOGIES, LLC. AND  
HYPERPHRASE INC.,

V.

Plaintiffs,

## BILL OF COSTS

GOOGLE INC.

Defendant.

Case Number: 06-cv-199bbc

Judgment having been entered in the above entitled action on 10/01/2008 against Plaintiffs,  
Date  
 the Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$ _____
Fees for service of summons and subpoena .....	_____
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case .....	<u>1,123.15</u>
Fees and disbursements for printing .....	_____
Fees for witnesses (itemize on page two) .....	_____
Fees for exemplification and copies of papers necessarily obtained for use in the case .....	<u>356.93</u>
Docket fees under 28 U.S.C. 1923 .....	_____
Costs as shown on Mandate of Court of Appeals .....	_____
Compensation of court-appointed experts .....	_____
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....	_____
Other costs (please itemize) .. (See Dkt. 90) .....	<u>35,011.02</u>
TOTAL	\$ <u>36,491.10</u>

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

## DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

- ☒ Electronic service by e-mail as set forth below and/or.  
☐ Conventional service by first class mail, postage prepaid as set forth below.

s/ Attorney: \_\_\_\_\_

Name of Attorney: Jason W. Wolff

For: \_\_\_\_\_

Defendant Google Inc.

Name of Claiming Party

Date: 10/15/08

Costs are taxed in the amount of \_\_\_\_\_ and included in the judgment.

Clerk of Court

By: \_\_\_\_\_

Deputy Clerk

Date

# FEES OF THE COURT REPORTER



**ESQUIRE DEPOSITION SERVICES, LLC**  
A Hobart West Company  
Tax ID # 22-3779684  
505 SANSOME STREET, SUITE 502  
SAN FRANCISCO, CA 94111

79270 JENNJ01

TEL (800) 770-3363 FAX (415) 288-4286

To:

FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

INVOICE NUMBER	DATE
74021ESF	03/19/08

ATTN : JASON WOLFF

Due Upon Receipt

AMOUNT DUE

ENCL.

YOUR REFERENCE NUMBER:

CAPTION:

HYPER PHASE VS. GOOGLE

SERVICES PROVIDED ON 03/12/08:  
EVAN SIDARTO

SHIPPING & HANDLING  
LITIGATION SUPPORT PACKAGE  
B&W EXHIBITS  
ROUGH DISK  
Thank You!

145.35 1CC

~~40.00~~ X

25.80

8.25

~~64.40~~ X

TOTAL

283.80

Thank You!

BALANCE DUE

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law. Contact us immediately with questions or corrections regarding billing or payment. No adjustments or refunds will be made after 120 days from date of payment.

Please detach and send with payment

For Invoice Questions,  
Please Call  
(800) 770-3363  
Fax (415) 288-4286

Remit To:

**ESQUIRE DEPOSITION SERVICES, LLC**  
P.O. Box 785751  
Philadelphia, PA 19178-5751  
Tax ID # 22-3779684

JOB: 79270 TOT: \$283.80  
INVOICE #: 74021ESF  
DATE: 03/19/08

FISH & RICHARDSON, PC  
Attn: JASON WOLFF  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

**ESQUIRE**  
DEPOSITION SERVICES®

LINKING TESTIMONY, TRADITION AND TECHNOLOGY



ESQUIRE DEPOSITION SERVICES, LLC

A Hobart West Company

Tax ID # 22-3779684

505 SANSOME STREET, SUITE 502

SAN FRANCISCO, CA 94111

TEL (800) 770-3363

FAX (415) 288-4286

79269

PERRR01

To:

FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

INVOICE NUMBER	DATE
74019ESF	03/19/08

ATTN : JASON WOLFF

Due Upon Receipt

AMOUNT DUE

ENCL

YOUR REFERENCE NUMBER:

CAPTION:

HYPER PHASE VS. GOOGLE

SERVICES PROVIDED ON 03/11/08:

LUKE STONE

JENNIE LIN

COPY 4-DAY EXPEDITED SERVICE

ADMINISTRATIVE FEE

LITIGATION SUPPORT PACKAGE

B&amp;W EXHIBITS

ROUGH DISK

Thank You!

324.90

1CC

153.90

1CC

336.00

35.00

51.60

42.35

212.80 X

BALANCE DUE

TOTAL

1,156.55

Thank You!

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law. Contact us immediately with questions or corrections regarding billing or payment. No adjustments or refunds will be made after 120 days from date of payment.

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Please Call  
(800) 770-3363  
Fax (415) 288-4286

Remit To:

ESQUIRE DEPOSITION SERVICES, LLC  
P.O. Box 785751  
Philadelphia, PA 19178-5751  
Tax ID # 22-3779684

JOB: 79269 TOT: \$1156.55  
INVOICE #: 74019ESF  
DATE: 03/19/08

FISH & RICHARDSON, PC  
Attn: JASON WOLFF  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081



LINKING TESTIMONY, TRADITION AND TECHNOLOGY

# FEES FOR EXEMPLIFICATION AND COPIES

K & B Copy Group, Inc.  
 527 Marquette Avenue  
 Suite 150 1st Floor  
 Minneapolis, Minnesota 55402  
 (612) 339-8100  
 Federal Tax 41-1943175

Invoice #: 00037902

Bill To:  
 Fish & Richardson PC PA  
 60 South Sixth Street  
 Minneapolis, MN 55402

Ship To:  
 Fish & Richardson PC PA  
 60 South Sixth Street  
 Minneapolis, MN 55402  
 Attn: Jacque  
 Job Number: 03-155i

Salesperson		Client Reference		Due Date	Ship Via	Return Date	Date
Alan Freeman		21238-002LL1		3/29/2008	Free	3/18/2008	3/19/2008

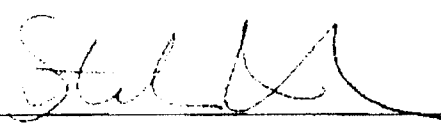
Qty.	Item No.	Description	Price	Unit	Disc	Extended	Tax
1	46a	CD Master	\$25.00	each		\$25.00	X
46	36e	Electronic Endorsements	\$0.03	each		\$1.38	X
0.5	25a	Tech Time	\$100.00	hour		\$50.00	X
<b>PAY FROM THIS INVOICE</b>							
GOOGLE H026686 - H026690; H035012 - H035021; GOOG079243 - GOOG079273 <i>Endorsed Pdfs</i>				Sale Amount Freight Sales Tax Total Paid Balance Due		\$76.38 \$0.00 \$5.46 \$81.84 \$0.00 \$81.84 ✓	
By signing this invoice you are acknowledging that the "Bill To" party will pay this invoice in full by the date as indicated above. WE CANNOT ACCEPT THIRD PARTY BILLING RESPONSIBILITY. Terms: Net 10 days. There will be a finance charge of 1% monthly on accounts past 30 days.							
Received By: <i>Jacqueline G. Allard</i>				Date: <i>4-3-08</i>			

K & B Copy Group, Inc.  
 527 Marquette Avenue  
 Suite 150 1st Floor  
 Minneapolis, Minnesota 55402  
 (612) 339-8100  
 Federal Tax 41-1943175

Invoice #: 00038016

Bill To:  
 Fish & Richardson PC PA  
 60 South Sixth Street  
 Minneapolis, MN 55402

Ship To:  
 Fish & Richardson PC PA  
 60 South Sixth Street  
 Minneapolis, MN 55402  
 Attn: Stephanie McCracken  
 Job Number: 03-2571

Salesperson		Client Reference		Due Date	Ship Via	Return Date	Date
Alan Freeman		21238-002LL1		4/6/2008	Free	3/27/2008	3/27/2008
Qty.	Item No.	Description	Price	Unit	Disc	Extended	Tax
299	10a	Electronic Numbering	\$0.03	each		\$8.97	X
2	46a	CD Master	\$25.00	each		\$50.00	X
					<b>PAY FROM THIS INVOICE</b>		
Google - Endorse PDF Images for Production (GOOG087130 - GOOG087428)					Sale Amount \$58.97 Freight \$0.00 Sales Tax \$4.22 Total \$63.19 Paid \$0.00 Balance Due \$63.19 ✓		
<p>By signing this invoice you are acknowledging that the "Bill To" party will pay this invoice in full by the date as indicated above.          WE CANNOT ACCEPT THIRD PARTY BILLING RESPONSIBILITY.          Terms: Net 10 days. There will be a finance charge of 1% monthly on accounts past 30 days.</p>							
Received By: 					Date: 4-14-08		

**Billed and Unbilled Recap Of Cost Detail - [080565-0001 - Hyperphrase Technologies, LLC et al. v. Google]**

Client:080565 - GOOGLE INC. 10/13/2008 11:04:55 AM

Page 2

Date	Invoice #	Name	Quantity	Unit Price	Amount	Description	Account #
01/04/2008	02652	NICOLE E. TALBOTT SETTLE	01	29.00	0.15	4.35 Photocopies	3976320
06/24/2008		Invoice=451696		29.00	0.15	4.35	
02/08/2008	02270	JESSICA SCHLUMPF	01	1.00	0.15	0.15 Photocopies	3990794
06/24/2008		Invoice=451696		1.00	0.15	0.15	
02/29/2008	02293	SUSAN L. SMOLAK	01	78.00	0.15	11.70 Photocopies	3999581
06/24/2008		Invoice=451696		78.00	0.15	11.70	
02/29/2008	02293	SUSAN L. SMOLAK	01	464.00	0.15	69.60 Photocopies	3999582
06/24/2008		Invoice=451696		464.00	0.15	69.60	
03/11/2008	02652	NICOLE E. TALBOTT SETTLE	01	48.00	0.15	6.90 Photocopies	4004459
06/24/2008		Invoice=451696		48.00	0.15	6.90	
04/14/2008	02253	AMY PROGAR	01	2.00	0.15	0.30 Photocopies	4020546
06/24/2008		Invoice=451696		2.00	0.10	0.20	
04/15/2008	02253	AMY PROGAR	01	1190.00	0.15	178.50 Photocopies	4021324
06/24/2008		Invoice=451696		1190.00	0.10	119.00	

Σ = \$211.90



# OTHER COSTS

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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HYPERPHRASE TECHNOLOGIES,  
LLC and HYPERPHRASE, INC.

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

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MEMORANDUM AND ORDER  
06-C-199-S

Plaintiffs Hyperphrase Technologies, LLC and Hyperphrase, Inc. commenced this patent infringement action alleging that Defendant Google Inc.'s AutoLink and AdSense products infringed plaintiffs' United States Patents Nos. 5,903,889, 6,434,567, 6,526,321 and 7,013,298. On December 20, 2006 this Court granted summary judgment of non-infringement to defendant on all of plaintiffs' claims. On March 19, the clerk taxed costs against plaintiffs pursuant to Rule 54(d) in the amount \$35,011. Plaintiffs now appeal from the award of costs. Plaintiff also seeks a stay of its obligation to pay costs pending its appeal on the merits of the action.

MEMORANDUM

Plaintiffs' argument on appeal of costs is based on a challenge to the cost per copy reflected in the award. Plaintiffs concede that defendant may recover copying costs for the 83,000 pages it produced to plaintiffs in discovery, but argues that a reasonable rate per page is \$0.15, yielding a total copy award of

Copy of this document has been  
provided to: PLS GUNN

M. Friedman & Schulerbach

this 25 day of APR, 2007

by M. Hardin

M. Hardin, Secretary to  
Judge John C. Shabaz

\$12,450 and a reduction of \$20,831. Defendant maintains that the taxable copy costs of \$33,282 awarded by the clerk accurately reflects defendant's actual cost to produce the copies and that this amount is justifiably higher because of the parties' agreement to exchange documents electronically.

The clerk awarded costs based on invoices submitted and paid by defendant. However, because the parties had agreed to provide each other with electronic copies, those invoices included such costs as black and white document scanning (\$0.14 per page), color document scanning (\$0.95 per page), bates labeling (\$0.06 per page) electronic numbering and file conversion (\$0.03 per page). The average cost per page to perform these processes relating to electronic production was about \$0.38 per page, substantially more than a typical paper copy cost. The only evidence in the record is that these costs were actually incurred and are within the normal range for the type of document processing provided.

The issue on appeal is whether these costs are recoverable under the applicable statutes, or whether recovery is limited to the typical cost for paper copies as plaintiffs advocate. The Court now concludes that costs are not so limited. The law permits recovery for "fees for exemplification and copies of papers necessarily obtained for use in the case." 28 U.S.C. § 1920(4) The fees awarded were for copying documents and making them available electronically as the parties had agreed. Although these

costs are greater than the cost of paper copies, having documents available in electronic form may facilitate other efficiencies which justify the added cost. The clerk's review of the submitted invoices and taxation of costs is appropriate and affirmed.

Plaintiffs request, and defendant does not oppose, a stay in the collection of costs pending appeal. The parties have agreed that such costs may be paid within thirty days of an affirmance of the judgment by the Court of Appeals together with statutory interest from the date of judgment until payment. The Court construes defendant's acquiescence as a waiver of its right to a supersedeas bond pursuant to Rule 62(d). Accordingly,


ORDER

IT IS ORDERED that the clerk's taxation of costs in the amount of \$35,011.02 is AFFIRMED and that said costs be included in the judgment.

IT IS FURTHER ORDERED that proceedings to enforce the judgement for costs are stayed pursuant to Rule 62(d), without the giving of a supersedeas bond, costs together with statutory interest from the entry of judgment to be paid within thirty days of an order by the Court of Appeals affirming the judgment.

Entered this 24th day of April, 2007.

BY THE COURT:

  
\_\_\_\_\_  
JOHN C. SHABAZ  
District Judge